There enter into the calculations matters that are not readily convertible into terms of dollars and cents. Again there are accidents in life and such ills to which flesh is heir which might reduce the life expectancy of the fittest of men. After anxious consideration of what a man of 52 could be expected to do for himself during the remaining years of his life, and taking into account relevant factors such as incidence of taxation, rate of possible saving had the defendant been able to continue working normally, the accelerated getting in of a substantial sum in cash, I have come to the conclusion that in all the circumstances $80,000 would be a fair and reasonable compensation under the head of general damages.

There will therefore be judgment for the defendant for the sum of $99,572.17 and costs to be taxed.

Judgment for the defendant.

Solicitors: *Shearn, Delamore & Co.; Sault, Keith Sellar & Co.*

LIOW SANG v. CHAI CHOO KIM & ANOR.

[O. C. J. (Gill J.) October 23, 1962]

[K.L. — Civil Suit No. 654 of 1961]

Damages — Personal injuries — Multiple fractures — Leg amputated through the knee — Rupture of urethra — Impotence — Assessment of damages.

The plaintiff, a 35-year old lorry driver whose average daily earning was $8, whilst riding a bicycle early one morning was run into from behind by a lorry driven by the first defendant and which was travelling in the same direction as the plaintiff. It was alleged that this lorry had just been in a collision with a lorry driven by the second defendant, also travelling in the same direction. The plaintiff claimed damages for personal injuries sustained by him as a result of the accident from one or the other or both of the defendants as he alleged that he was run into and knocked down as a result of the negligence on the part of the first or second defendant or both of them. The first defendant admitted that it was his lorry which knocked down the plaintiff, but denied that it was caused by his negligence. He maintained that the accident was caused by the negligence of the second defendant. The second defendant denied negligence on his part.

Held: (1) the first defendant was in no way negligent and that the injuries to the plaintiff was caused as a direct and immediate result of the second defendant's negligence;

(2) in all the circumstances of this case and taking into consideration the injuries sustained by the plaintiff which caused his detention in hospital for approximately six months the sum of $3,420 awarded as special damages and $37,000 as general damages.

Cases referred to:

(1) *Pahang Lin Siong Motor Co. Ltd.* v. *Cheong Swee Khai* [1962] M.L.J. 29.

(2) *Jag Singh* v. *Toong Fong Omnibus Co. Ltd.* [1962] M.L.J. 78.

(3) *Atkinson* v. *Ministry of Supply* (1952), 1 Kemp & Kemp, 2nd Ed. 430.

CIVIL SUIT.

Denis Murphy (*G. T. S. Sidhu* with him) for the plaintiff.

Tan Tee Seng for the first defendant.

Khoo Eng Chin for the second defendant.

Cur. Adv. Vult.

Gill J.: The plaintiff in this case was riding a bicycle along Ampang Road in the direction of Kuala Lumpur on 11th March, 1961, at about 7 a.m. when at or about the 3¾ milestone he was run into and knocked down by motor lorry No. BD. 2023 which was driven by the first defendant and which was travelling in the same direction. It is alleged that this motor lorry had just been in collision with motor lorry No. BF. 6342 which was driven by the second defendant and which was also travelling in the same direction as the plaintiff. He claims damages for personal injuries sustained by him as a result of the accident from one or the other or both of the defendants as he alleges that he was run into and knocked down as a result of negligence on the part of the first defendant or the second defendant or both of them.

The first defendant admits that there was an accident but denies that it was caused by his negligence. He maintains that the accident was caused by the negligence of the second defendant. The second defendant, on the other hand, denies negligence on his part and alleges that the collision was caused solely by the negligence of the first defendant.

The plaintiff's case as to how the accident happened consists of his evidence, the evidence of Police Sergeant, Abdul Kassim bin Said (P.W. 2) and the evidence of Police Corporal, Abdul Wahid bin Akhbar (P.W.7) who himself was riding a bicycle along Ampang Road behind the plaintiff and was knocked down by the lorry driven by the first defendant. The evidence of the plaintiff is very brief and amounts merely to this, that as he was approaching the 3¾ milestone he heard a smashing sound and became unconscious. He woke up later in hospital when he saw that he was without a foot. He summed up his evidence in his answer to a question put to him under cross-examination when he said that as far as he was concerned he did not know how the accident happened. All he can remember is that he heard a bang and became unconscious.

The evidence of Abdul Wahid (P.W.7) is that on 11th March, 1961, he was cycling from the police barracks at the 4th mile, Ampang Road, towards Kuala Lumpur when he heard a sound behind him. On turning round and looking behind, he saw two lorries, the one behind trying to overtake the one in front and the one in front refusing to give way. He then

heard a bang whereupon he looked back and saw a lorry which knocked him down. Under cross-examination by learned counsel for the first defendant he stated that at first he saw two lorries but that when he was knocked down he saw only one lorry. He further said that he did not see the two lorries collide with each other but admitted that in the lower court he did say that he saw one lorry in collision with another. The banging sound, he said, was the collision between two lorries. On cross-examination by learned counsel for the second defendant he stated that before he looked round for the first time he heard the sounds of lorries coming. He looked back the second time when he heard a bang and then saw one lorry coming towards him at a distance of about 6 feet from him. That was the lorry which knocked into him. In answer to a question by the Court he said that after he was knocked down he did not see anything as he became unconscious.

The evidence of Abdul Kassim (P.W.2) was to the effect that on 11th March, 1961 he arrived at the scene of the accident at 7.40 a.m., took certain measurements at the scene and from those measurements he drew a plan (P.1). He said that it was a clear day and the scene of the accident was dry. He found no marks at the scene which were consistent with skidding. He then described the damage suffered by the two lorries. As far as lorry BD. 2023 was concerned, all the damage was to the front part of the lorry. The most significant damage described by him to this lorry was that its front bumper on the right was pulled forward. As regards lorry BF. 6342 the near side front and rear mudguards were dented, the front bumper was bent, the near side head and side lamps were broken, the rim of the near side rear wheel was bent and the near side rear tyre was torn. Lorry BD. 2023 had come to rest against a coconut tree off the road on the left side and lorry BF. 6342 was found in the compound of the house on the left side of the road further up from the other lorry.

The evidence of the first defendant is as follows. On 11th March. 1961, at about 7 a.m. he was driving lorry BD. 2023 along Ampang Road and was going in the direction of Kuala Lumpur. It was not raining, the road was dry, visibility was good and he could clearly see ahead of him. He was driving at about 20 miles per hour. On both sides of the road there were cyclists. There were cyclists immediately to his left and proceeding in the same direction. There was a lorry coming behind him. He saw from the mirror in his lorry that the lorry behind him was trying to overtake his lorry. In fact he saw that the lorry behind was on the point of swerving to the right whereupon he put out his hand to signal to the lorry behind not to overtake because there were a lot of people on the left side of the road, pedestrians and cyclists. The lorry behind, without paying any heed to his signal not to overtake, came up alongside his lorry and then swerved to the left. In doing so it knocked against the right end of the front bumper of his lorry and dragged it along to the left thereby causing him to knock down three cyclists who were proceeding in the same direction. After knocking down the three cyclists his lorry knocked against a coconut tree and came to rest there, whereas the other lorry went on to a spot near a bungalow. The speed of the other lorry as it overtook him was about 40 miles per hour.

This defendant stated quite frankly that it was his lorry which knocked down all the three cyclists. He knew immediately before the accident that there were cyclists in front of him. He was quite certain, however, that his lorry ran into the cyclists because the right end of the front bumper of his lorry was hooked to the other lorry as a result of which his lorry was dragged along. In answer to a question put to him by the court, he said that the other lorry pushed his lorry to the left, as a result of which he knocked the cyclists. The other lorry had not gone past the cyclists when he knocked them. His lorry was being dragged along as it struck the cyclists. The first cyclist he knocked down was only about three feet ahead of him when the other lorry collided with his lorry. The two lorries got disengaged after his lorry had been dragged for about three feet.

The attendant on lorry BD. 2023 named Yew Tong Hock (D.W.2) testified that just before the collision the lorry behind was coming up fast and that he waved his hand to the lorry behind to slow down because there were many cyclists on the side. The lorry behind did not slow down and started overtaking their lorry. After it had overtaken his lorry half way, he heard a bang and his lorry was dragged along by the other lorry and run off to the foot of the tree off the road. He stated that as his lorry was not covered he had a clear view of the other lorry from where he was. Like the first defendant, he was quite certain that the other lorry in overtaking his lorry collided with it and dragged it along. As his lorry was being dragged along, it knocked against three cyclists and ended up against a tree. The other lorry did not sound its horn before commencing to overtake.

The next witness was one Chong Loy (D.W. 3), a fellow worker of the plaintiff. He too was riding a bicycle along Ampang Road behind the plaintiff and two other cyclists. There were in fact two cyclists between him and the plaintiff. He stated that he saw the accident happen and that there were two lorries involved both of which were proceeding in the direction of Kuala Lumpur. At the time of the accident one lorry overtook the other. He was behind the lorry which knocked against the cyclists and the other lorry overtook this lorry, knocked into its front side and forced it to the left side of the road. After the accident the overtaking lorry went far away to a bungalow and the lorry on the left side knocked into the foot of a coconut tree.

The second defendant's story is that on the 11th of March, 1961, at about 7 a.m. he was driving motor lorry BF. 6342 along Ampang Road in the direction of Kuala Lumpur. He was following lorry BD. 2023 at a distance of 30 feet and he was driving at less than 30 miles an hour. At 3¾ milestone, Ampang Road, there was a collision. At this stage he was following BD. 2023 which suddenly stopped as a result of which he swerved to his right, lost control and his lorry went in the direction of a bungalow. He swerved his lorry to the right because if he had not done so, he would have knocked into the other lorry which had stopped. He did not know why the other lorry stopped and he stated that in swerving to the right in order to avoid the other lorry, he did not at any time collide with it. His lorry went off the road and eventually ended up in the compound of a bungalow. He also said that he generally left his house to go to work at about 5 a.m. or even earlier but that on the day in question he left his house late at past 6 a.m. He said he was in no hurry to get to his place of work that morning. He admitted that the lorry in front had an attendant. Under cross-examination he said that the lorry in front was going along in a perfectly normal manner before it stopped suddenly and swerved a little to its left. When the police report which he made on the date of the accident (P.7) was put to him, he agreed that he had mentioned in his report that the lorry in front was wobbling. This, of course, was in direct contradiction of what he said in his evidence in court. He tried to explain it away by saying that what he said about the lorry in front travelling in a normal manner was incorrect. He admitted that the damage suffered by his lorry set out in his police report was correct. In particular, he agreed that the rim of the rear near side wheel of his lorry was bent. Contrary to what the Police Sergeant (P.W.2) said in his evidence, he said that the tyre fitted to this rim was not torn, although there were a few lines or cracks on it. He was unable to offer an explanation as to how the rim came to be bent. He said he understood the evidence of Chong Loy to the effect that his lorry collided with the other lorry. When pressed to answer a question as to whether the evidence of Chong Loy was true, he said: "May be he saw my lorry knock into the other lorry. I would say he was not telling the truth when he said my lorry collided with the other lorry."

I have given very careful and thoughtful consideration to the whole of the evidence in this case as to how the accident happened. In my opinion there is overwhelming evidence to show that the lorry driven by the second defendant collided with the lorry driven by the first defendant. Apart from the evidence of witnesses, this is abundantly clear from the mute evidence of the damage suffered by the two lorries. In particular, the pulling forward of the right end of the front bumper of lorry BD. 2023 as shown in photographs D2 and D3 and the damage to the rim and tyre of the rear near side wheel of BF. 6342 furnish complete corroboration of the first defendant's story as to how the collision between the two lorries took place resulting in the plaintiff being knocked down. In the face of all this evidence I must say that I find the evidence of the second defendant utterly incredible. I do not for one moment believe that his lorry did not collide with the other lorry. Indeed I am compelled to echo the suggestion by learned counsel for the first defendant that the second defendant told the court a pack of lies. His story is that when he swerved to the right, he lost control of his lorry. I cannot understand how that could have happened unless his lorry had collided with the other lorry. The truth would appear to be that he lost control of his lorry as a result of the impact of his lorry with the other lorry and was then driven along to end up in the compound of a house. Had he been able to overtake the other lorry without coming into contact with it, to my mind the other lorry would not have collided with the three cyclists.

This brings me to the first question that falls to be decided in this case, namely, whether there was negligence on the part of the first defendant, or on the part of the second defendant, or both. In order to reach a decision on this question, I would state my conclusions as follows. Firstly, I find as a fact that the first defendant was keeping a proper look out as he was driving his lorry. He was not driving at an excessive speed. He did not swerve to the near side of the road when it was unsafe so to do, but his lorry was dragged to its left side as a result of the impact of lorry BF. 6342 with it and he had no opportunity to slow down, swerve or otherwise avoid a collision with the plaintiff. Secondly, I find as a fact that the second defendant in driving lorry BF. 6342 was coming up fast and that he overtook motor lorry BD. 2023 when both the driver and the attendant of the lorry waved to him not to overtake and while it was unsafe for him so to do. He collided with motor lorry BD. 2023 thereby causing it to run into the plaintiff. In the circumstances I find that the first defendant was in no way negligent and that the injuries to the plaintiff were caused as a direct and immediate result of the second defendant's negligence.

The next question for determination is the quantum of damages. As to special damages, they have been agreed at $424.86 and loss of earnings to plaintiff from the date of the accident to the date of trial which is almost exactly 19 months. The plaintiff's evidence is that he earned on the average $8 per day. This is corroborated by the evidence of the contractor (P.W. 6) who said that he employed plaintiff for at least 150 days in a year and paid him an average of $8 per day. The contractor also stated that he knew for a fact that when plaintiff was not working for him, he was employed by others. In

the circumstances I find that plaintiff's claim for loss of earnings at $180 a month is reasonable and I accordingly award a sum of $3,420.

With regard to general damages, the evidence of Dr. Abdul Majid bin Ismail (P.W.1), Orthopaedic Surgeon, General Hospital, Kuala Lumpur, is that the plaintiff suffered from a crushed right leg below the knee with the foot missing, a fracture of the shaft of the right femur and multiple fractures of the pelvis with rupture of the urethra. The plaintiff was in a bad condition when he was brought to the hospital. He was given resuscitative treatment and his leg was amputated through the knee. Because of the fracture of the femur, it had to be plated to enable an artificial leg to be fitted to the stump. Plaintiff was kept in hospital until 5th September, 1961. Dr. Abdul Majid further testified that the injury to the urethra was the sort of injury which causes impotence. There is also the evidence of Dr. Terence Roe (P.W.3) who treated the plaintiff for ruptured urethra. His evidence shows that the plaintiff's urethra had to be dilated now and again to enable plaintiff to pass urine and that this treatment will have to be continued for some time although the time may come when plaintiff may need to see a doctor perhaps once a year. He gave further evidence to say that he examined plaintiff five or six days before the trial and found that his general condition was good. On further examination he stimulated the plaintiff's penis and the scrotal skin to see if he would have an erection, but over a period of about 30 minutes there was no erection of the penis. He was, however, unable to say whether the plaintiff is impotent or not. On the question of impotence Brigadier R. S. Hunt (P.W.4), a consultant surgeon to the Far East Land Forces, gave evidence to say that as a result of his physical examination of the plaintiff, a study of the history of his case, the examination of X-rays and prostatic massage of the plaintiff he formed the opinion that the plaintiff is impotent. His opinion is based on the fact that a severe displacement of the bones at the root of the penis causes interference with the blood supply to the erectile tissue thus causing impotence. On the evidence of this witness which is to a certain extent corroborated by Dr. Abdul Majid, I have come to the conclusion that the plaintiff is impotent. There is of course the evidence of the plaintiff himself to say that he attempted to have intercourse with his wife in November, 1961, without success and that he has tried five or six times after that to have intercourse with his wife, but that he has been unable to do so because he does not have an erection, although he does have the desire to have sexual intercourse.

The injuries sustained by the plaintiff which caused his detention in the hospital for approximately six months, must have caused him great pain and suffering. His right leg has been amputated through the knee and he has become impotent as a result of these injuries. Although he will be able to walk once the artificial leg is fitted, he will not be able to do any work which calls for the lifting of heavy objects. The plaintiff is 35 years of age. His present general condition is stated to be good so that, barring accidents, he has a reasonable expectation of a normal working life of another twenty years. By reason of his artificial leg, however, his future earning capacity will be reduced considerably although he should find no difficulty in engaging in some form of light work. In all the circumstances of his case the plaintiff will also suffer considerable loss of amenities of life. Taking all these factors into consideration, I consider this eminently a case for substantial general damages which I assess at $37,000.

In arriving at my assessment of general damages, I have had in mind the decisions of the Court of Appeal in the cases of *Pahang Lin Siong Motor Co. Ltd. & Anor.* v. *Cheong Swee Khai & Anor.* [1] and *Jag Singh* v. *Toong Fong Omnibus Co. Ltd.* [2]. As regards damages for impotence, I considered the case of *Atkinson* v. *Ministry of Supply* [3] on *Quantum of Damages*, to which I was referred by Mr. Murphy, but subject to the observations of the Court of Appeal in the *Pahang Lin Siong Motor Co. Ltd.* case that "local social, economic and industrial conditions are poles apart from conditions in England and Scotland and any tendency to take a particular line in relation to assessment of damages in cases of this type from a consideration of English and Scottish cases is not calculated to produce very useful results."

There will be judgment for the plaintiff in the sum of $40,844.86 and judgment in favour of the first defendant. On the question of costs I order the second defendant to pay the costs of the plaintiff and of the first defendant, costs to be on the higher scale.

Judgment for the plaintiff. Second defendant to pay costs of the plaintiff and first defendant.

Solicitors: *Murphy & Dunbar; Allen & Gledhill; George & Khoo.*

THE NEW INDIA ASSURANCE CO. LTD. v. WOO CHING FONG

[C. A. (Rose C.J., Buttrose and Wee Chong Jin JJ.) October 25, 1962]

[Singapore — Civil Appeal No. 16 of 1962]

Insurance — Indemnity against loss of or damage to car — Driving under influence of drink — Whether breach of condition to take all reasonable steps to safeguard the car from loss or damage — Whether assured's criminal act precludes recovery of indemnity if not committed deliberately.

In this case the assured was a dance hostess who, while driving the insured car, collided with a tree, as a result of which the car was completely smashed and the assured killed. It was not disputed that the assured was at the time under the influence of drink to such an